

Exhibit 10

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

5 - - -
6 HONORABLE MARIANA R. PFAELZER,
7 UNITED STATES DISTRICT JUDGE PRESIDING
8 - - -

9 NEUROGRAFIX,)
10) CERTIFIED COPY
11 PLAINTIFF,)
12)
13 VS.) CV 10-01990 MRP
14)
15 SIEMENS MEDICAL SOLUTIONS)
16 USA INC., et al.,)
17)
18 DEFENDANTS.)
19 -----)

20
21 MARKMAN HEARING
22 REPORTER'S TRANSCRIPT OF PROCEEDINGS
23 THURSDAY, MARCH 24, 2011
24 A.M. SESSION
25 LOS ANGELES, CALIFORNIA

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APPEARANCES OF COUNSEL:

3

ON BEHALF OF PLAINTIFF:

4

RUSS AUGUST & KABAT

5

BY: MARC A. FENSTER, ESQUIRE

ANDREW D. WEISS, ESQUIRE

6

ALEXANDER GIZA, ESQUIRE

12424 WILSHIRE BOULEVARD

7

12TH FLOOR

LOS ANGELES, CA 90025

8

JOSH SEAT, SPECIAL AGENT

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10 ON BEHALF OF DEFENDANT:

SIEMENS

11

BY: ERIC C. LIEBELER, ESQUIRE

FRANK J. NUZZI, ESQUIRE

12

KIRKLAND ELLIS

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BY: GREGG LOCASIO, ESQUIRE

SEAN M. MCELDOWNEY, ESQUIRE

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655 15TH STREET NW

SUITE 1200

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WASHINGTON, D.C. 20005

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1 selectivity of the nerve and also met the other
2 limitations of the claim.

3 But right now we're only focusing on the
4 controlling step. And the question is: Would one of
5 skill in the art know whether this limitation is met or
6 not? And the --

7 THE COURT: Because the people who are in
8 the art know how to do this?

9 MR. FENSTER: Because they know whether or
10 not the selectivity is being enhanced or not.

11 THE COURT: Do they know how to do it?

12 MR. FENSTER: With the teaching of this,
13 yes. With the teaching of the patent, yes. This
14 absolutely teaches you how to control the steps A, B and
15 C to enhance the selectivity of the nerve.

16 THE COURT: Go on.

17 MR. FENSTER: But it's not limited to a
18 particular method. And that is their primary objection.

19 THE COURT: Yes.

20 MR. FENSTER: But that doesn't make it
21 indefinite. Indefiniteness requires one of skill in the
22 art wouldn't know whether it's met or not. And that --
23 they just have not made any showing that that's the
24 case. And in fact, there is nothing ambiguous about
25 whether -- about the language enhancing the selectivity

1 of the nerve and whether one of skill in the art would
2 know when that happened or not.

3 Now, defendants have tried to treat this
4 controlling step in a blanket way applying to each of
5 Claims 1 through 35. They have not made any
6 particularized showing with respect to individual
7 claims. And, Your Honor, that is just a failure on
8 their part to meet their burden.

9 Let me show you why in Claim 3.

10 So in the next slide we see that the same
11 controlling step appears in Claim 3, but it goes on to
12 be more specific about what that controlling must
13 include. And specifically it says --

14 THE COURT: So what you are saying is that
15 any method you use to reach that end under one is all
16 right.

17 MR. FENSTER: That's correct. And one of
18 skill in the art would absolutely know whether or not
19 it's being met. But Claim 3 is much more specific.

20 Claim 3 requires that that controlling step
21 include selecting a combination of echo time and
22 repetition time that exploits a characteristic spin-spin
23 relaxation coefficient of peripheral nerves, et cetera,
24 wherein said spin-spin relaxation coefficient is
25 substantially longer than that of other surrounding

1 tissue.

2 So, Your Honor, what this is referring to is
3 that long T2-weighting. Remember I showed you from the
4 specification that these inventors discovered for the
5 first time, contrary to the teaching of the prior art,
6 that that the T2 relaxation time for a nerve was twice
7 as long as that of muscle. And once you get to long TE
8 echo times of greater than 60 milliseconds, for example,
9 you start to differentiate nerve from muscle. That is
10 specifically what Claim 3 requires.

11 Now, Claim 3 has a very specific requirement
12 on what the controlling step must include. There's no
13 argument or showing that one of skill in the art
14 wouldn't know whether that's met; and, therefore, you
15 can't find that Claim 3 is invalid for indefiniteness on
16 the controlling step.

17 In fact, the meaning of that language is
18 agreed. The next slide, 15, shows that the specific
19 limitations in the controlling step in Claim 3 are
20 actually agreed.

21 So, in addition to the disputed terms, the
22 parties have worked together and reached agreement on
23 numerous agreed terms where we have agreed on the
24 construction.

25 One of those is echo time. One is

1 repetition time. And one is this phrase from Core 3,
2 where it -- a combination of echo time and repetition
3 time that exploits the spin-spin relaxation coefficient,
4 that is an agreed term. They didn't take the position
5 that that is ambiguous somehow, let alone insolubly so.
6 Instead we've actually agreed on the limitation.

7 Now, I don't understand how a term that
8 includes -- that is limited to an agreed construction
9 can somehow be insolubly ambiguous.

10 The other claims illustrate this point
11 further in Slide 16. Claim 4, Your Honor, requires that
12 this controlling step be limited to an echo time of over
13 60 milliseconds. There's nothing ambiguous about that.
14 In fact, it's quite specific.

15 In Claim 5, it requires a repetition time of
16 over 1 second. That's a further limitation on the
17 controlling step that they say is ambiguous. Even if
18 Your Honor were to find that the controlling step were
19 ambiguous, then the dependent claims clarifying it and
20 limiting it are not. And there is no showing to the
21 contrary.

22 And similarly, Claim 6 requires fat
23 suppression. There are numerous limitations in the
24 dependent claims, and so the defendants' failure to go
25 through claim by claim is significant here.

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CERTIFICATE OF REPORTER.

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR
THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
TO SECTION 753, TITLE 28, UNITED STATES CODE, THE
FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE
STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE
FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: APRIL 4, 2011

SHERI S. KLEEGER, CSR
FEDERAL OFFICIAL COURT REPORTER